

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**No. DA 09-0340**

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ROBERT HILTEN and LYNN HILTEN, )  
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 Plaintiffs and Appellants, )  
 )  
 v. )  
 )  
 ROY BRAGG, )  
 )  
 Defendant and Appellee )

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ORDER

**FILED**  
APR 27 2010  
*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Plaintiffs and Appellants have filed, through their counsel, an “unopposed motion for extension of time for transmission of record and for order vacating and resetting briefing deadline” in this matter. They state that the record on appeal is not yet complete, and that the record has yet to be supplemented with a transcript of proceedings from a December 18, 2009 hearing and related pleadings and orders. They further state that the transcript of proceedings from the December 18, 2009 hearing is delayed because of the court reporter’s inability to timely prepare the transcript. Moreover, they state that the opening appellate brief cannot be adequately prepared in the absence of a transcript of proceedings from the December 18, 2009 hearing. It is also apparent that the record on appeal previously received by this Court was erroneously believed to be complete, but was in fact incomplete, which caused this Court to begin the briefing schedule prematurely.

The appellant has a duty to present to this Court a record sufficient to enable it to rule upon the issues raised. M. R. App. P. 8(2). Plaintiffs and Appellants have asserted that the record of proceedings relating to the December 18, 2009 hearing is necessary for this Court to rule upon the issues to be raised on appeal, and that Plaintiffs and Appellants are not to blame for the failure of the transcript from that date to be completed.

Montana Rule of Appellate Procedure 9(3)(b) provides for an extension of time for the transmission of the record on appeal under precisely these circumstances, i.e., where the failure to transmit the complete record is due to the court reporter’s inability to timely prepare a transcript.

Further, briefing deadlines should not be scheduled short of 30 days following the date upon which the record is filed. M. R. App. P. 13(1). In this case, the briefing deadlines currently set were premature because the record that was filed was not complete.

THEREFORE,

IT IS ORDERED that the motion for extension of time for transmission of the record is GRANTED; the time for transmission of the record shall be extended by 90 days from March 29, 2010.

IT IS FURTHER ORDERED that the deadline for appellate briefing is VACATED until the complete district court record is transmitted to this Court, at which time the Court will Order a new briefing schedule.

DATED this 11<sup>th</sup> day of April, 2010.

  
SUPREME COURT JUSTICE